

REMARKS

The rejection of claims 1-4 as being anticipated by the Honstein reference is respectfully but emphatically traversed for the reasons given in applicant's previous response to the first action in this application as well as the remarks that follow.

The examiner states that "Applicant's arguments filed 12/15/2008 have been fully considered but they are not persuasive." It is respectfully submitted that the examiner is either being obstinate at worse or simply naive at best. The examiner admits that he considered the base of the Honstein reference to be the flat upper surface 59 and not the base wall as the examiner conveniently says "applicant has seemed to have interpreted." There is only one interpretation involved here, and that is of the examiner trying to cover his mistaken interpretation that the base of the Honstein reference was the flat upper surface 59.

As was pointedly mentioned in applicant's previous response, it is respectfully submitted that the Examiner has either misinterpreted or completely ignored what elements that the cited Honstein reference in fact has. The examiner is again referred specifically to paragraphs [0085] and [0086] of the Honstein reference. In the first sentence of paragraph [0085] it is said:

Terry M. Crellin
204 W. 330 North
La Verkin, Utah 84745
(435) 635-7967

"Referring now to FIGS. 1 and 3, it may be seen that base wall 42 of trough 39 in molding tray 31 has a flat upper surface 59, and includes an outer rectangular ring-shaped portion 60 which is joined to the inner wall surfaces of the front, rear, inner and outer end walls of the tray."

Now, where is there any interpretation when the Honstein reference specifically states that the base wall 42 has a flat upper surface 59 and includes an outer rectangular ring-shaped portion 60. The ring-shaped portion 60 is indeed (no interpretation needed) part of the base wall 42. It is specifically stated that the base wall 42 and the upper surface 59 includes the outer ring-shaped portion 60. The ring portion 60 is not a flange associated with the side walls of the tray, but instead is an included portion of the base wall 42 and the flat upper surface 59.

In the first sentence of paragraph [0085] of the Honstein reference it is said:

"Referring still to FIGS. 1 and 3, it may be seen that center panel 61 of base wall 42 is connected to outer rectangular ring-shaped portion 60 of the base wall by a plurality of readily breakable, or frangible members 65."

Again, it is specifically stated that the center panel 61 of the base wall 42 is connected to the outer rectangular ring-shaped portion 60 of the base wall 42. There is no suggestion or even implication that the ring-shaped portion 60 is a flange incorporated on the side wall of the tray. Instead, it is

Terry M. Crellin
204 W. 330 North
La Verkin, Utah 84745
(435) 635-7967

specifically enumerated that "center panel 61 of base wall 42 is connected to outer rectangular ring-shaped portion 60 **of the base wall** (emphasis added) by a plurality of readily breakable, or frangible members 65."

It is further explicitly stated in paragraph [0086]:

"With this construction, pins 65 may be readily molded to have a thickness substantially less than that of center panel 61, thus enabling the pins to be readily broken and thereby permitting the center panel to be broken away and removed from tray 31. {{Note that the center panel 61 is broken away and removed from the tray and that there is no suggestion even remote of tearing away or removing the side walls from the tray}}} With center panel 61 thus removed from tray 31, base wall 42 of the tray {{Note that the base wall 42 remains and the part that remains is the ring-shaped portion 60 and that the side walls are still very much attached to and have not been torn away and removed from the base wall and the tray}}} has through its thickness dimension a concentrically located, longitudinally elongated rectangular-shaped aperture 69, as shown in FIG. 23."

The examiner should specifically pay careful attention to the underlined notes that applicant has added to the above quote.

Now, it is again pointed out that the ring-shaped portion 60 is joined permanently to the side walls of the tray, and the side walls of the tray CANNOT be torn away from this ring-shaped portion 60 of the base wall 42. The center panel 61 is broken away and removed from the ring-shaped portion 60. There is no way possible, and certainly none is suggested, for tearing away the side walls of the tray. The side walls of the tray of the

Terry M. Crellin
204 W. 330 North
La Verkin, Utah 84745
(435) 635-7967

Honstein reference CANNOT be torn away from the base wall of the tray, and there is absolutely no suggestion whatsoever in the Honstein reference of tearing the side walls of the tray away from the ring-shaped portion 60 of the base wall.

As was pointed out in the previous response, if the side walls of the tray of the Honstein reference were somehow torn away, it would render the tray totally useless. Those side walls of the tray of the Honstein reference contain necessary and essential registration ribs 49 and grooves 50 which are needed for the poured model to be returned to the tray after being removed therefrom, such that the poured model and individual segments thereof which are cut from it when it is removed are returned to exact pre-existing locations within the tray. If those side walls were torn away and removed, there would be absolutely no way of returning the poured model and individual segments cut therefrom to the tray in exact pre-existing locations within the tray. It is certainly not even obvious, let alone an anticipation, to modify a device of a reference so as to render the device TOTALLY USELESS.

Now, lets look at the examiner's statement that "Applicant's claims never spell out the structure of the base or the side wall, therefore there is nothing in the claim to indicate that the side wall can't have a ledge as is present in Honstein."

Terry M. Crellin
204 W. 330 North
La Verkin, Utah 84745
(435) 635-7967

First, lets again revisit the question of whether Honstein actually shows a side wall having a ledge. As shown conclusively above, Honstein shows a base wall 42 that has an outer ring-shaped portion 60 and a removable inner portion 61. There is no ledge on the side wall. The side wall is joined to and integrally attached to the perimeter of the ring-shaped outer portion 60 OF THE BASE WALL 42.

Turning further to the examiner's unsupported, incorrect supposition that there is nothing in applicant's claims to indicate that the side wall can't have a ledge. It is pointed out that applicant's claims all require that the planar base has a side wall **extending upwardly from the perimeter of the base**. That in itself does indeed indicate that the side wall can't have a ledge. The side wall EXTENDS UPWARDLY FROM THE PERIMETER OF THE BASE AND NOT FROM A LEDGE. More importantly, applicants claims expressly require a thin, membrane-like connector member that is formed integrally with the PERIMETER of the base and the **lower side edge of the side wall**. The lower side edge of the side wall of applicant's claims IS NOT CONNECTED TO A LEDGE. The perimeter of the base of the device of the cited Honstein reference is attached permanently and integrally to the side walls. There is absolutely no thin, membrane-like connector member that is formed integrally with the PERIMETER OF THE BASE

Terry M. Crellin
204 W. 330 North
La Verkin, Utah 84745
(435) 635-7967

and connects that PERIMETER to the LOWER SIDE EDGE OF THE SIDE WALL.

Further, applicant's claims all require that the thin, membrane-like connector member is frangible and easily broken so that the side wall can be torn away from the base and discarded after dental casting material has hardened in the cavity formed by the side wall. If the side wall had a ledge, as the examiner inappropriately supposes it can have, there would be NO POSSIBLE WAY that the side wall and the ledge could be torn away from the base. Just look at the tray of the Honstein reference. IT WOULD BE PHYSICALLY IMPOSSIBLE TO TEAR THE SIDE WALL AND THE OUTER PORTION 60 OF THE BASE (what the examiner equates with a ledge) AWAY FROM THE TRAY. Simply stated, the side wall of the tray of the Honstein reference CANNOT be torn away from the base wall of the tray, and there is absolutely no suggestion whatsoever in the Honstein reference of tearing the side wall of the tray away from the base wall.

In fact, as mentioned above, if the side walls of the tray of the Honstein reference could somehow miraculously be torn away, it would render the tray totally useless. Those side walls of the tray of the Honstein reference contain necessary and essential registration ribs 49 and grooves 50 which are needed for the poured model to be returned to the tray after being

Terry M. Crellin
204 W. 330 North
La Verkin, Utah 84745
(435) 635-7967

removed therefrom, such that the poured model and individual segments thereof which are cut from it when it is removed are returned to exact pre-existing locations within the tray. If those side walls were somehow miraculously able to be torn away and removed, there would be absolutely no way of returning the poured model and individual segments cut therefrom to the tray in exact pre-existing locations within the tray.

Now, it is recognized that the examiner can conceivably continue to press his irresponsible and unsupported supposition that there is nothing in applicant's claims to indicate that the side wall can't have a ledge. Applicant believes that to continue to press that supposition would be inappropriate, but if the examiner obstinately clings to that supposition, applicant has no way of forcing the examiner to see the light and change his mind. Thus, in an effort to ameliorate the situation and meet the examiner half way, applicant has amended the claims so that it is explicit that the side wall has a lower side edge that lies on the side wall and forms a lower terminus to the side wall. That amendment is certainly supported by the specification, drawings and claims as filed, and there is, thus, no question of new matter being added into the application. In addition, the amended claims definitely and conclusively indicate that the side wall can't have a ledge. That should completely

Terry M. Crellin
204 W. 330 North
La Verkin, Utah 84745
(435) 635-7967

obviate the argument made by the examiner in the final rejection. If the amendment is entered, the amended claims should be allowed, and it is further reiterated that the examiner's argument in the final rejection is in fact misplaced and that the claims should be allowed even if the present amendment is not entered.

There is no justifiable reason for refusing to enter the present amendment to the claims. 37 CFR 1.116 (b) (3) states that an amendment touching the merits of the application or patent under reexamination may be admitted upon showing of good and sufficient reasons why the amendment is necessary and was not earlier presented. In the present situation, it was certainly not known to applicant that the examiner was going to make the argument that the claims do not indicate that the side wall can't have a ledge. As stated above, applicant feels that the argument is unsupported, and applicant could certainly not have second guessed the examiner so as to even remotely think that the examiner would make such an unsupported argument. Thus, the amendment could not have been reasonably made until the examiner did express his argument, and that was not done until the examiner issued the present final action. Applicant should indeed be able to respond to that new issue by making an amendment to obviate that issue. The present amendment is

Terry M. Crellin
204 W. 330 North
La Verkin, Utah 84745
(435) 635-7967

necessary to ameliorate the situation and thereby add a restriction to the claim that obviates the examiner's argument and concern.

The claims have also been amended so as to correct formal matters that have been overlooked by the examiner. The use of the preferred word "said" has replaced the word "the" in appropriate instances, and the phrase "one leg" has been changed to "first leg" in accordance with the examiner's suggestion in the previous action.

The rejection of claim 5 as being obvious from the Honstein reference under 35 U.S.C. 103 is seen to be ludicrous and is therefore respectfully traversed. As pointed out previously with respect to the rejection of claims 1-4, the Honstein reference does not even remotely suggest the essential elements of claim 1 upon which claim 5 is dependent. In addition, it simply would clearly and conclusively not be obvious to modify the tray of the Honstein reference such that the side walls of the tray could be torn away from the tray. Doing such would render the tray of the Honstein reference totally useless, and it certainly is not obvious to modify a device of a reference so as to render the device TOTALLY USELESS.

The rejection of claims 6-7 as being obvious from Honstein in view of Huffman under 35 U.S.C. 103 is respectfully traversed. The Huffman reference does not remedy the glaring deficiencies of the Honstein reference as discussed above. There is no

suggestion whatsoever in the Huffman reference of the essential elements of claim 1 as previously discussed with respect to the rejection of claim 1 and claim 5. There is further absolutely no suggestion in the Huffman reference of means for tearing away of the side wall of a dental tray.

The rejection of claim 8 as being obvious from Honstein in view of Huffman and McPherson under 35 U.S.C. 103 is respectfully traversed. The McPherson reference does not remedy the glaring deficiencies of the Honstein reference as discussed above. There is no suggestion whatsoever in the McPherson reference of the essential elements of claim 1 as previously discussed with respect to the rejection of claims 1-4 and claim 5. There is, in addition, absolutely no suggestion in the McPherson reference of means for tearing away of the side wall of a dental tray.

All the claims of the application are now in proper formal condition and they clearly distinguish over the cited prior art. Accordingly, the claims are believed to be in condition for immediate acceptance, and a notice to that effect is earnestly solicited.

Respectfully submitted,



Terry M. Crellin
Reg. No. 25,579

Terry M. Crellin
204 W. 330 North
La Verkin, Utah 84745
(435) 635-7967